

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1822-JLR

DEFENDANTS' MOTION TO FILE
DOCUMENTS UNDER SEAL IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO MICROSOFT'S
MOTIONS IN LIMINE

**NOTE ON MOTION CALENDAR:
Friday, August 16, 2013**

I. INTRODUCTION

Pursuant to Western District of Washington Civil Local Rule CR 5(g)(2), Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation (collectively "Motorola") respectfully move this Court for leave to file under seal the following:

1. Defendants' Opposition to Microsoft's Motions in Limine.
2. Exhibit A to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.

1 3. Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants’
2 Opposition to Microsoft’s Motions in Limine.

3 4. Exhibit C to the Declaration of Andrea Pallios Roberts in Support of Defendants’
4 Defendants’ Opposition to Microsoft’s Motions in Limine.

5 5. Exhibit D to the Declaration of Andrea Pallios Roberts in Support of Defendants’
6 Opposition to Microsoft’s Motions in Limine.

7 6. Exhibit E to the Declaration of Andrea Pallios Roberts in Support of Defendants’
8 Opposition to Microsoft’s Motions in Limine.

9 7. Exhibit F to the Declaration of Andrea Pallios Roberts in Support of Defendants’
10 Opposition to Microsoft’s Motions in Limine.

11 8. Exhibit G to the Declaration of Andrea Pallios Roberts in Support of Defendants’
12 Opposition to Microsoft’s Motions in Limine.

13 9. Exhibit L to the Declaration of Andrea Pallios Roberts in Support of Defendants’
14 Opposition to Microsoft’s Motions in Limine.

15 **II. CERTIFICATION**

16 In accordance with Local Civil Rule 5(g)(3)(A), the undersigned counsel certifies that on
17 August 5, 2013 Shane Cramer (on behalf of Microsoft) and Andrea Pallios Roberts (on behalf of
18 Motorola) met and conferred, both telephonically and via email, regarding the need and extent to
19 file under seal certain limited portions of Defendants’ Opposition to Microsoft’s Motions in
20 Limine, and supporting exhibits.

21 **III. BACKGROUND**

22 Microsoft Corporation (“Microsoft”) and Motorola entered into a stipulated Protective
23 Order, which was approved by the Court on July 21, 2011. (Dkt. No. 72.) This Protective Order
24 outlines categories of material that should be maintained in confidence, along with procedures for
25 sealing confidential material when included in documents filed with the Court. Specifically,
26 paragraph 1 specifies that:

1 Confidential Business Information is information which has not been made public
2 and which concerns or relates to the trade secrets ... amount or source of any
3 income, profits, losses, or expenditures of any person, firm, partnership,
4 corporation, or other organization, the disclosure of which information is likely to
have the effect of causing substantial harm to the competitive position of the
person, firm, partnership, corporation, or other organization from which the
information was obtained....

5 *Id.* at 1-2. This information should be marked as “CONFIDENTIAL BUSINESS
6 INFORMATION, SUBJECT TO PROTECTIVE ORDER.” *Id.* at 2. Additionally, paragraph 6
7 specifies that:

8 (1) Confidential Business Information pertaining to licensing or other
9 commercially sensitive financial information shall not be made available under
10 this paragraph 6 to such designated in-house counsel; the supplier shall designate
11 such Confidential Business Information pertaining to licensing or other
12 commercially sensitive financial information as “[SUPPLIER’S NAME]
CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’
EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and promptly provide a
redacted version of such document that may be disseminated to the two in-house
counsel designated under this paragraph 6....

13 *Id.* at 4. Finally, Paragraph 2 of the Protective Order governs the sealing of documents, and states
14 in relevant part that:

15 During the pre-trial phase of this action, such information, whether submitted in
16 writing or in oral testimony, shall be disclosed only *in camera* before the Court
and shall be filed only under seal, pursuant to Rule 5(g) of the Local Civil Rules
of the United States District Court for the Western District of Washington.

17 *Id.* at 2.

18 Thus, the Protective Order provides that Motorola may request to seal documents by
19 formal motion pursuant to Rule 5(g) of the Local Civil Rules of the Western District of
20 Washington. Local Rule Rule 5(g)(3) states that:

21 (3) A motion to seal a document, even if it is a stipulated motion,
22 must include the following:

23 (A)a certification that the party has met and conferred with all
24 other parties in an attempt to reach agreement on the need to file
25 the document under seal, to minimize the amount of material
26 filed under seal, and to explore redaction and other alternatives
to filing under seal; this certification must list the date, manner,
and participants of the conference;

(B) a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations where necessary.

Where parties have entered a litigation agreement or stipulated protective order (*see* LCR 26(c)(2)) governing the exchange in discovery of documents that a party deems confidential, a party wishing to file a confidential document it obtained from another party in discovery may file a motion to seal but need not satisfy subpart (3)(B) above. Instead, the party who designated the document confidential must satisfy subpart (3)(B) in its response to the motion to seal or in a stipulated motion.

Similarly, federal law recognizes that courts should protect trade secrets or other confidential commercial information by reasonable means, permitting the filing under seal of documents containing such information. *See* Fed. R. Civ. P. 26(c)(1)(G) and (H) (stating that a court may require that (1) “a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way” and (2) “the parties simultaneously file specified documents or information in sealed envelopes...”).

Though courts recognize a general right to inspect and copy public records and documents, including judicial records, the United States Supreme Court has stated that this right is limited. “[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). In discussing examples of improper purposes, the Court indicated that courts are not to serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

As the Ninth Circuit stated:

The law, however, gives district courts broad latitude to grant protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information. *See* Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the district court to issue “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden.” The Supreme Court has interpreted this language as conferring “broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

1 *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

2 **IV. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES MOTOROLA**
3 **TO FILE THIS MOTION FOR LEAVE TO SEAL**

4 In accordance with the Protective Order and the above-referenced authority, Motorola
5 moves to file the documents described below under seal.

6 Defendants' Opposition to Microsoft's Motions in Limine contains quotes from and
7 summaries of deposition testimony that Microsoft and Motorola designated as "MICROSOFT
8 CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER." This document
9 should accordingly be sealed.

10 Exhibit A to the Declaration of Andrea Pallios Roberts in Support of Defendants'
11 Opposition to Microsoft's Motions in Limine is excerpts of the deposition of K. McNeill Taylor,
12 Jr. Motorola designated this testimony as "HIGHLY CONFIDENTIAL." This document should
13 accordingly be sealed.

14 Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants'
15 Opposition to Microsoft's Motions in Limine is excerpts of the deposition of Horacio E. Guiterrez.
16 Microsoft designated this testimony as "HIGHLY CONFIDENTIAL." This document should
17 accordingly be sealed.

18 Exhibit C to the Declaration of Andrea Pallios Roberts in Support of Defendants'
19 Opposition to Microsoft's Motions in Limine is excerpts of the deposition of Kirk. W. Dailey.
20 Motorola designated this testimony as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY." This document should accordingly be sealed.

22 Exhibit D to the Declaration of Andrea Pallios Roberts in Support of Defendants'
23 Opposition to Microsoft's Motions in Limine is excerpts of the deposition of Brian Blasius.
24 Motorola designated this testimony as "CONFIDENTIAL BUSINESS INFORMATION." This
25 document should accordingly be sealed.
26

Exhibit E to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine is excerpts of the deposition of Kirk Dailey, In the Matter of Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof. Motorola designated this testimony as "CONFIDENTIAL BUSINESS INFORMATION – SUBJECT TO PROTECTIVE ORDER." This document should accordingly be sealed.

Exhibit F to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine is excerpts of the trial testimony of Kirk Dailey, sealed by Court order. This document should accordingly be sealed.

Exhibit G to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine is a document titled "Motorola Licenses Granting Rights to Patents Contained in 802.11 or H.264 Annexes" that Motorola provided to Microsoft during discovery. Motorola designated this document as "CONFIDENTIAL BUSINESS INFORMATION – SUBJECT TO PROTECTIVE ORDER." This document should accordingly be sealed.

Exhibit L to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine is excerpts of the deposition of Allen Lo. Third party Google designated this testimony as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." This document should accordingly be sealed.

V. CONCLUSION

For the foregoing reasons, Motorola respectfully requests that this Court order that the following document be filed under seal:

1. Defendants' Opposition to Microsoft's Motions in Limine.
2. Exhibit A to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.
3. Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.

4. Exhibit C to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.
5. Exhibit D to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.
6. Exhibit E to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.
7. Exhibit F to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.
8. Exhibit G to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.
9. Exhibit L to the Declaration of Andrea Pallios Roberts in Support of Defendants' Opposition to Microsoft's Motions in Limine.

DATED this 5th day of August, 2013.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

By /s/ Ralph H. Palumbo

By /s/ Philip S. McCune

Ralph H. Palumbo, WSBA #04751

Philip S. McCune, WSBA #21081

ralphp@summitlaw.com

philm@summitlaw.com

By /s/ Thomas V. Miller

Thomas V. Miller

MOTOROLA MOBILITY LLC

600 North U.S. Highway 45

Libertyville, IL 60048-1286

(847) 523-2162

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Kathleen M. Sullivan

Kathleen M. Sullivan, NY #1804624
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7000
kathleensullivan@quinnemanuel.com

By /s/ Brian C. Cannon

Brian C. Cannon, CA #193071
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
(650) 801-5000
briancannon@quinnemanuel.com

By /s/ William C. Price

William C. Price, CA #108542
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
(213) 443-3000
williamprice@quinnemanuel.com

***Attorneys for Motorola Solutions, Inc.,
Motorola Mobility LLC and General
Instrument Corp.***

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Arthur W. Harrigan, Jr., Esq.
Christopher T. Wion, Esq.
Shane P. Cramer, Esq.
Calfo Harrigan Leyh & Eakes LLP
arthurh@calfoharrigan.com
chrisw@calfoharrigan.com
shanec@calfoharrigan.com

Richard A. Cederroth, Esq.
Brian R. Nester, Esq.
David T. Pritikin, Esq.
Douglas I. Lewis, Esq.
John W. McBride, Esq.
David Greenfield, Esq.
William H. Baumgartner, Jr., Esq.
David C. Giardina, Esq.
Carter G. Phillips, Esq.
Constantine L. Trela, Jr., Esq.
Ellen S. Robbins, Esq.
Nathaniel C. Love, Esq.
Sidley Austin LLP
rcederroth@sidley.com
bnester@sidley.com
dpritikin@sidley.com
dilewis@sidley.com
jwmcbride@sidley.com
david.greenfield@sidley.com
wbaumgartner@sidley.com
dgiardina@sidley.com
cphillips@sidley.com
ctrela@sidley.com
erobbins@sidley.com
nlove@sidley.com

T. Andrew Culbert, Esq.
David E. Killough, Esq.
Microsoft Corp.
andycu@microsoft.com
davkill@microsoft.com

DATED this 5th day of August, 2013.

/s/ Marcia A. Ripley

Marcia A. Ripley